


IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE MATTER OF THE JULY 2022
NEVADA STATE BAR EXAMINATION

FILED
APR 21 2022
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

*ORDER REGARDING MODIFIED JULY 2022 NEVADA BAR
EXAMINATION*

During this court's annual meeting with the members of the Board of Bar Examiners (the Board) held on March 23, 2022, a request was made by the Board to suspend the use of the Multistate Bar Examination (MBE) for the July 2022 examination. The examination will maintain the essay portion of the examination, including seven Nevada essay questions and two practice or performance tests. As the Board has explained to this court in the past, the reliability of an essay-only format depends on an enhanced grading process through an increased number of essays that are administered. Based on this reasoning and for health reasons related to the Covid-19 pandemic,¹ this court has previously approved suspension of the MBE for the August 2020, February 2021, and February 2022 examinations. This court has also been informed that the Board did not utilize the enhanced grading process for the July 2021 examination, as the examination included the MBE.

¹Currently, the Board anticipates administering the test in person.

For this process, which is considered by the Board to be in conformance with best practices for an exam without the MBE, each essay exam answer will be scored by two independent graders. To enhance grader calibrations, analytical rubrics will be developed for each essay question. Finally, score evaluations will be performed and monitored throughout the grading process.

The Board has also advised this court of the following:

1. While the last three of four exams did not include the MBE, the pass rates were not affected in those exams without the MBE;
2. The results of the Board's recent study of the MBE showed very little correlation between an exam with the MBE and the factors to be considered for minimum competency to practice law;
3. While the MBE tests knowledge and some analytical skills, it does not test writing skills;
4. The National Conference of Bar Examiners is revamping the national exam within the next few years, which will likely result in a significant change to or elimination of the MBE as part of the national exam; and
5. Conducting the July 2022 examination without the MBE would add one more data point for use in the ongoing evaluation of whether the pass rate without the MBE is similar to the pass rate with the MBE.²

²On March 9, 2022, this court entered an Order in ADKT 594 creating the Bar Licensing Commission and charging the Commission to study the issues and concerns arising from the methodology and administration of the bar examination and the licensing procedures for attorneys with the State of Nevada. The Board believes the data from the July 2022 exam will help inform the Commission in its work.

We approve the request of the Board to modify the format of the July 2022 bar examination and suspend the use of the MBE for that exam. The Nevada Bar Examination, without the MBE, shall take place on July 26 and 27, 2022, with its modified format and pursuant to the grading protocols set forth in Exhibit A attached hereto. Further, Supreme Court Rules 65 and 69(1), as well as paragraphs 32, 33, and 36 of Addendum 1 to those Rules, shall be suspended for the July 2022 Nevada Bar Examination. The July 2022 bar exam will be given as a live exam in accordance with the requirements established by the Board of Bar Examiners, subject to further amendment to this Order if this court determines that a remote exam is necessary due to the COVID-19 pandemic. If any current applicants for the July 2022 bar exam, who have applied and paid their fees as of the date of this Order, desire to defer taking the bar exam until the February 2023 exam, they will be permitted on a one-time basis only to defer their application and transfer their fees to the February 2023 exam by notifying the Admissions Department in writing within two weeks of the date of this Order.

It is so ORDERED.


Parraguirre


Hardesty, J.


Stiglich, J.


Cadish, J.


Herndon, J.

PICKERING, J. with whom SILVER, J. agrees, dissenting:

I respectfully dissent. Applications to take Nevada's July 2022 bar exam were due by March 1, 2022 (extendable to May 1, 2022, with a significant late fee). *See* Nev. SCR 52.1(a). Every state in the country, except Louisiana, currently includes the Multistate Bar Exam (MBE) as part of its bar exam. National Conference of Bar Examiners (NCBE), *Jurisdictions Administering the MBE*, <https://www.ncbex.org/exams/mbe/> (last visited April 18, 2022). Nevada uses the nationally vetted MBE scores to statistically validate the grading of the essay portion of its bar exam, which consists of essay questions the members of the Nevada Board of Bar Examiners (BBX) draft for each sitting of the Nevada bar exam. *See* Nev. SCR 65(3), 66; *id.* Addendum 1, parts V-VI. And applicants may transfer the MBE scores they earn on the Nevada bar exam to other states, obviating the need to retake the MBE elsewhere. *See* Nev. SCR Addendum 1, part VI, ¶ 45. To suspend the rules adopting the MBE and integrating it into the grading and administration of the Nevada bar exam at this late date, without notice, public comment or hearing, or advance warning to the individuals who have already signed up and started preparing for the July 2022 exam is unreasonable.

On March 9, 2022, the court created a commission to study the Nevada bar exam. *See In the Matter of the Review of the Administration of the Bar Examination and Licensing of Attorneys in Nevada*, ADKT 594, filed March 9, 2022. The majority cites this newly created commission's need for "one more data point" as the reason for eliminating the MBE from the July 2022 Nevada bar exam. But this explanation does not carry. The MBE provides more data, not less. If the goal is to assess the reliability of the BBX grading the essay portion of the Nevada bar exam without the MBE as statistical leavening, we would retain the MBE for the July 2022 exam

and grade the essays with the MBE, as the Supreme Court Rules provide, then experimentally grade the essays without the MBE, and compare the results. More fundamentally, the commission's charge is to assess whether the Nevada bar exam fairly measures minimal lawyer competence. *Id.* For this, we do not need to know whether the Nevada BBX can reliably grade the essay portion of the exam without the MBE—they can, as was shown during COVID, when the MBE could not be given because of exam security concerns and social distancing constraints. Rather, we need information like the data collected in the studies the NCBE is conducting nationally on bar exams as a measure of lawyer competence which, while they address format, seem more focused on subjects tested and examinee knowledge required. See NCBE, *Next Generation of the Bar Exam*, <https://www.ncbex.org/about/nextgen-bar-exam/> (last visited April 18, 2022). Changing the format of the July 2022 Nevada bar exam in the three months leading up to its administration does not facilitate and may even distract from that important work.

For these reasons, I would not suspend the rules governing the format of the Nevada bar exam for the July 2022 exam and therefore respectfully dissent.

Pickering, J.
Pickering

I concur:

Silver, J.
Silver

cc: Richard M. Trachok II, Chair, Board of Bar Examiners
Ann Morgan, President, State Bar of Nevada
Kimberly K. Farmer, Exec. Director, State Bar of Nevada
Dean Gould, Admissions Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Douglas County Bar Association
Elko County Bar Association
Administrative Office of the Courts

EXHIBIT A

JULY 2022 NEVADA BAR EXAMINATION GRADING PROTOCOLS AND GUIDELINES FOR BAR EXAMS WITHOUT THE MBE

The focus of all licensing exams is fairness, reliability, and validity. Essay questions are considered by many to be a more valid measure of minimum competence but do not offer the same degree of reliability of an objective multiple-choice exam. The MBE has served both as a method of scaling the results of the grading of the essay questions and a source of added reliability due to the significant number of items on the exam, and the objective nature of the answer format (i.e., only one answer could be correct).

By using the essay format only, the emphasis must be how best to enhance the grading process to achieve an acceptable level of reliability that is consistent with current standards. The reliability of subjective examinations can be enhanced by increasing the observation points on the exam. One method is by increasing the number of gradings that each essay receives. Under current circumstances, the latter alternative is the more practical solution for this examination.

The following protocols and procedures used for the July 2020, February 2021 and February 2022 bar exams will be implemented. First each essay exam answer will be scored by two independent graders. Next, to enhance grader calibrations, analytical rubrics will be developed for each essay question that best practices suggest will enhance grader calibration. Finally, score evaluations will be performed throughout the grading process. Each of these steps represent best-practices and will assist the exam administrators with detecting and correcting any divergence of scoring standards among the graders.

The following grading protocols and standards are proposed:

1. There will be seven Nevada Essay exams. Essay exams will be graded on a 10-point scale. A score of "7" on each question shall be designated as constituting minimum competence. The final score for each essay exam shall be determined based on the average of the two independent scores, with any conflicts decided by the Bar Examiner who wrote the question.
2. There will be two Nevada Practice Tests ("NPT's"). To reflect the importance of the NPT, scores on these questions will be weighted one and one-half time the value of any essay exam.
3. There shall be 100 total allowable points for the Nevada Bar Exam (10 points for each of the 7 essay exams and 15 points for each of the NPT's).
4. Applicants must obtain a total of not less than 70 points OR achieve a score of 7 or greater on at least 7 essay exams, including the NPT's to pass the exam.
5. Scores from respective graders on any essay exam that vary by 3 or more points will be evaluated by the Board of Bar Examiners, which will establish the final score. In the event a question is given a passing score by one grader and a failing score by the other grader, the Board member who drafted the question shall reevaluate the essay exam and make the final decision on that question.
6. The Board will reassess the exam in those cases where an examinee achieves a cumulative score between 65 and 69.99.